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FISCAL IMPACT REPORT

SPONSOR Grubestic DATE TYPED 03/04/05 HB _____

SHORT TITLE Private Investigator Licensing Requirements SB 796

ANALYST McSherry

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	\$380.4	\$380.4	Recurring	Private Investigators Fund

(Parenthesis () Indicate Revenue Decreases)

Senate Bill 796 duplicates House Bill 1059.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Regulations and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 796 proposes to amend the Private Investigators and Polygraphers Act. The bill would change the licensing structure and regulatory authority for private investigators and private patrol (security) operators.

Specifically, the bill would:

Eliminate the requirement that persons licensed as private investigators conducting investigations obtain information regarding "the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliation, association, transactions, acts, reputation or character of any person." The bill would rather require that when conducting investigations with respect to crimes against a state or the United States; stolen property; damage or injury to persons or property; and securing evidence.

Require that private investigator managers, and private patrol operator managers be assigned to and operate from company or branch offices for which they are licensed;

Provide for registration and different qualifications for three levels of “security guards,” which would be distinguished on the basis of whether the guard would be unarmed, armed with a weapon other than a firearm, or armed with a firearm.

Exempt “an attorney licensed in New Mexico conducting private investigations while engaged in the practice of law” from the Act’s private investigator licensing requirements. Current law exempts all attorneys without regard to their license status or activities.

Establish a “private investigators, private patrol operators, and polygraph examiners board” which would be given the responsibility for administering the Act. Currently the Regulation and Licensing Department administers the Act, with input from an advisory board. The board would consist of five members appointed by the governor.

Require the new board to implement rules which would raise the age of eligibility for a private investigator license and private patrol operators license from 18 to 21.

Provide for “private investigation company” and “private patrol operator company” licenses for entities providing private investigation or private patrol services within New Mexico. Current statutes provide for licensing individuals or branch offices, but not companies.

Provide for registration of private investigator employees who work under direct control and supervision of a licensed private investigator.

Establish a procedure for private patrol operator companies to hire and register temporary security guards for special events

Allow the new board to establish fees for registration and licensure, and set limits for those fees.

Require private investigation and private patrol operator companies to carry 1 million dollars in general liability insurance.

Allow the new board to deny licenses to those who have violated any state or federal “labor, tax or employee benefit law or rule”.

Allow the new board to assess civil penalties for violating the act, up to \$1000 per violation.

Allow the new board to enter into licensing reciprocity agreements with other states.

Provide for fingerprinting and background checks for persons licensed or registered under the Act.

Allow private patrol operators to provide services as bodyguards. Current law restricts those services to private investigators.

Extend the sunset provisions for the Act from July 1, 2006 to July 1, 2012.

Enact a temporary “grandfather” provision for security guards, watchmen, loss prevention officers and patrolmen who are currently licensed by the Regulation and Licensing Department.

Significant Issues

The Regulation and Licensing Department is currently responsible for licensing private investigators, private patrol operators and polygraphers with the assistance of an advisory board appointed by the department. This legislation would create the Private Investigators, private patrol operators and polygraph examiners board with the authority that was previously the responsibility of the Superintendent.

The newly proposed board (although already in existence as an advisory board) has not been through the Sunrise process as provided for in the Sunrise Act. This bill proposes substantial changes to the current licensing process and statutes for multiple professions and may benefit from being proposed in public hearings through the sunrise process.

The Act, as amended, would require additional training for individuals who seek to be licensed as Private Investigators or Private Patrol Operators.

The bill would be effective July 1, 2005. The included provisions to not seem to “grandfather” currently licensed private investigators or private investigator managers, but would provide for a “grandfather” for security guards, watchmen, loss prevention officers, and patrolmen. It is unclear as to what the status of currently licensed private investigators would be for those who may not meet the new age and other requirements proposed by this bill to be adopted by board rule. The board would have to conduct hearings to revoke licenses for those private investigators who do not qualify after it adopts its new rules, including private investigators and operators who are aged 18-20.

The Bill provides for the ability of the Board to conduct national background checks on prospective licensees before issuing a license to investigate, patrol or carry various types of weapons.

RLD reports that it has been over 10 years since any major amendments have been made to the Private Investigators and Polygraphers Act and that there have been many technological changes in the way in which private patrol operators and private investigators perform their duties.

This bill would appear to require both a company license and an individual license in order for a private investigator or private patrol operator to conduct business as a sole proprietor.

The new board is required to adopt rules providing for licenses and registration, including minimum education qualifications and training standards. Rules will not be adopted by the new board for some time after the board is created (July 2005); which would be the same time that that, the “department” would only be permitted to issue licenses to those who qualify under the new boards rules. The bill does not contain any temporary provisions allowing issuance of new licenses by RLD rules in the time between rule promulgation by the board and board creation.

The Act, as amended, would create a three-tiered licensure program for security guards, associating level of training and experience with level of licensure.

A Level One security guard would be an unarmed, entry level guard trained to perform basic guard duties

A Level Two security guard would be armed with a knight stick or other defense mechanism, but not registered by the Board to carry a firearm; and

A Level Three security guard would be able to carry a firearm, would be the most advanced level for a security guard

RLD asserts that, under the current legislation, the company that hires the security guards also owns the “guard cards,” so that each time a security guard changed employers they also have to apply for and receive a new security guard registration. The Department predicts that the proposed legislation would create increased security guard mobility and more guard flexibility within the profession.

The proposed amendments require each private investigation company or private patrol operator company provide the Board with a copy of the certificate of general liability insurance.

PERFORMANCE IMPLICATIONS

The Regulation and Licensing Department, and new board, would have to implement the provisions of this bill.

FISCAL IMPLICATIONS

Members of the new board would be entitled to per diem and mileage

RLD reports that the license fee for a security guard would increase from \$15 to \$50 and that these increased fees would increase board revenues by \$380.4

ADMINISTRATIVE IMPLICATIONS

The bill would increase the level of complexity involved in the licensing of security guards, private investigators and related professions causing increased administrative duties for the board and administrators.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 796 duplicates House Bill 1059.

TECHNICAL ISSUES

AGO cites the removal of the definition of “department” as a potential problem because NMSA Section 61-27A-6 provides that “the department” would issue private investigator licenses in accordance with board rules. AGO asserts that the bill seems to imply that “department” continues to refer to RLD by stating that the board is administratively attached to RLD. AGO suggests that the definition of “department” be retained, or “board” be substituted for “department” in Section 5 of the bill.

AGO also suggests that the bill clarify whether rule adoption is a condition precedent to implementing the new licensing requirements, and whether current private investigator licensees will be “grand fathered.”

It should be considered to provide for existing RLD rules be maintained in force until the new board can adopt its own rules.

OTHER SUBSTANTIVE ISSUES

According to RLD, during the last two years, the board has become aware of instances that involved the death or injury of a security guard or a citizen because of an improperly trained or un-registered security guard. The Department believes that the proposed legislation would create an effective protocol for licensing and registering individuals as security guards and/ or private investigators.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The Regulation and Licensing Department would continue to issue all licenses pursuant to the Private Investigators and Polygraphers Act.

RLD asserts that should the Bill not be enacted, the Board would not have the authority to conduct background checks beyond the information contained in books and records housed in the State of New Mexico. Security guards would not have established levels of licensure and the board would

POSSIBLE QUESTIONS

1. What is intended to happen in between the time the board is created and the created board determines education and standards for licensure as is proposed in the bill? Could RLD be given extended authority to administer the standards currently held for licensure?
2. Would currently licensed security guards under the age of 21 be grandfathered under this bill?

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